

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA – JACKSONVILLE DIVISION

CASE NO. 3:13-bk-00293-PMG  
CHAPTER 12

IN RE:

James David McKathan aka David McKathan aka  
M & H Training and Sales aka Grassroots Training  
and Sales and Kaylynn Hayman McKathan aka  
Martha K. Hayman aka Martha Kaylynn Hayman  
aka Kaylynn Hayman McKathan aka M& H  
Training and Sales,

Debtor(s)

FANNIE MAE'S MOTION FOR  
RELIEF FROM THE AUTOMATIC STAY

NOTICE OF OPPORTUNITY TO  
OBJECT AND REQUEST FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within 21 days from the date set forth on the attached proof of service, plus an additional three days for service if any party was served by U.S. Mail.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at United States Bankruptcy Court, Jacksonville Division, 300 North Hogan Street, Suite 3-150, Jacksonville, Florida 32202 and serve a copy on the movant's attorney, Marc G. Granger, Esq., at Kahane & Associates, P.A., 8201 Peters Road, Ste 3000, Plantation, FL 33324, and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing or consider the response and grant or deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

COMES NOW, Seterus, Inc., as authorized subservicer for Federal National Mortgage Association ("Fannie Mae"), a corporation organized and existed under the laws of the United States of America ("Secured Creditor"), by and through its undersigned counsel, files its *Motion for Relief from the Automatic Stay*, and in support thereof and states as follows:

1. This motion is brought pursuant to 11 U.S.C. § 362 and Bankruptcy Rule 4001 (a).
2. The Debtors listed above (the "Debtors") filed a voluntary petition pursuant to Chapter 11 of the Bankruptcy Code on August 1, 2012.
3. Secured Creditor holds a security interest in the Debtors' real property located at **13401 W Highway 316, Reddick, Florida 32686** (the "Property"), by virtue of a Mortgage dated November 12, 2004, which was recorded in the Public Records of Marion County, Florida, on November 18, 2004, in Official Records Book 03875 Pages 0016 – 0036. See attached Exhibit "A".
4. The Mortgage secures a promissory note in the amount of \$235,000.00 (see attached Exhibit "B") and gives Secured Creditor a first mortgage position on the Property, legally described as:

Commence at the SW corner of the SE 1/4 of said Section 7, thence N.00°16'53"W., along the West boundary line of the SE 1/4 of said Section 7 a distance of 50.05 feet, to a point on the Northerly right of way line of County Road No. 316 (100 foot wide) and the Point of Beginning; thence N.87°09'31"E., along said Northerly right of way line a distance of 635.46 feet; thence departing from said Northerly right of way line N.00°15'11"W., a distance of 1280.91 feet to a point on the North boundary line of the SW 1/4 of the SE 1/4 of said Section 7; thence S.86°37'42"W., along said North boundary line a distance of 636.38 feet to a point on the West boundary line of aforesaid SE 1/4; thence departing from said North boundary line and along said West boundary line of the SE 1/4 S.00°16'53"E., a distance of 1274.98 feet, to the Point of Beginning.

5. Secured Creditor timely filed its Proof of Claim No. 12 evidencing a total secured claim in the amount of \$229,361.03 (the "Claim").
6. On April 19, 2013, the Debtors filed their Chapter 12 Plan (Doc No. 25) (the "Plan"). The Property is designated as Class 3 in the Plan.
7. The Plan states that Secured Creditor shall have secured claim in the amount of \$229,361.03. Payments to Secured Creditor shall equal the amount of the secured claim amortized over 360 months with interest at the Till rate and that payment shall commence on the effective date of the Plan.

8. The Order Confirming Chapter 12 Plan was entered on July 11, 2014 (Doc No. 101) (the “Confirmation Order”) and an Agreed Order Granting Motion for Reconsideration and/or Clarification of the Order Confirming Plan (Doc No. 106) was entered on September 17, 2014 (the “Agreed Order”).
9. The Agreed Order provides, in pertinent part, that the correct interest rate is 6.25% instead of 5.25%. Additionally, the Debtors shall continue to pay escrow payments for taxes and insurance per notification from Secured Creditor.
10. The Debtors have failed to make any escrow payments for taxes and insurance despite notices that were sent to both the Debtors and Debtors’ counsel.
11. This Motion for Relief is brought pursuant to 11 U.S.C. § 362 (d)(1) “for cause” due to the Debtors’ material defaults under the Plan, Agreed Order and Confirmation Order and due to the Debtors’ failure to provide Secured Creditor with adequate protection.
12. By this Motion, Secured Creditor seeks *in rem* relief only and does not seek *in personam* relief against the Debtors.
13. Secured Creditor respectfully requests the Court waive the fourteen (14) day stay of the Order Granting Relief pursuant to Bankruptcy Rule 4001 (a)(3), so the Secured Creditor can pursue its *in rem* remedies without further delay.

**WHEREFORE**, Secured Creditor respectfully requests that the automatic stay be lifted so that it may pursue *in rem* remedies to protect its security interests in the Debtor(s)' property outside of the bankruptcy forum, that the fourteen (14) day stay of the Order Granting Relief pursuant to Bankruptcy Rule 4001(a)(3) be waived.

DATED this 11<sup>th</sup> day of July, 2018.

**Kahane & Associates, P.A.**

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By: 

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☒ Taji Foreman, Esq., Fla. Bar No.: 58606

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was electronically filed and/or mailed to all parties listed below this 11<sup>th</sup> day of July, 2018.

Respectfully Submitted,

**Kahane & Associates, P.A.**

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